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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re TERRANCE M., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRANCE M.,

Defendant and Appellant.

C044308

(Super. Ct. No. J57927)

Based upon two incidents, the San Joaquin County Juvenile Court sustained charges against Terrance M., a minor, of auto theft (Veh. Code, § 10851, subd. (a)--count 1), residential robbery (Pen. Code, §§ 211, 212.5--counts 2-4),¹ robbery (§ 211--count 7), and elder abuse (§ 368, subd. (b)(1)--counts 5 & 6) and found true several weapon enhancements (§§ 12022, subds. (a)(1) & (b)(1)). The minor was committed to the California Youth Authority.

¹ Undesignated statutory references are to the Penal Code.

On appeal, the minor contends (1) he received ineffective assistance of counsel, and (2) the evidence was insufficient to sustain the charges arising from the home invasion robbery. We disagree and shall affirm the order of commitment.

FACTS

On December 13, 2002, at 8:45 a.m., Gloria Sanchez was in her residence with her 82-year-old mother, Claudia Buscit, and her 65-year-old husband, Benjamin Sanchez, when she heard her mother ask, "Who are you? What are you doing here?"² Gloria stepped into the hall and saw a person, who was "a little bit white" and wearing a bandana below his nose, pointing a knife at her mother's neck and demanding money. At knifepoint, the person then took Gloria to the garage where she saw a dark-skinned person, wearing a sweatshirt with the hood up, holding a knife to her husband. The two assailants forced the Sanchezes into the kitchen and demanded money and jewelry. The men ended up taking \$8,000 to \$10,000 in jewelry and fled in the Sanchezes's van.

About two weeks after the robbery, Gloria was shown a photographic lineup and selected photo No. 2, depicting the minor, as the dark-skinned person who held the knife on her husband. She was sure of this identification. Gloria reaffirmed her identification by identifying the minor in court.

Gloria also selected photos Nos. 1 and 5 as looking like the light-skinned individual. However, she thought that No. 5

² Some of Gloria's testimony was given through an interpreter.

looked more like the light-skinned person but could not be sure. Photo No. 5 was of Eddie S., who was later arrested with the minor in connection with another robbery.

Gloria testified that the minor was a little taller than she, and she was 5 feet 5 inches tall. The light-skinned person was a few inches taller than she was. Gloria heard her husband describe one assailant to the police as 5 feet 9 inches tall, 180 pounds, and the other as 6 feet, 200 pounds.

Benjamin Sanchez was also shown the same photo lineup that was shown to his wife. He was unable to make a selection, stating that they all looked the same to him. However, when Benjamin saw the minor in court he was able to identify him as the hooded person who held the knife on him.

On December 26, 2002, about 11:45 p.m., Carlos Martinez was making his final pizza delivery for the evening when a van pulled in front of his vehicle and slammed on the brakes, causing Martinez to strike the rear end of the van. Three Black males wearing nylons over their faces got out of the van, one with a shotgun. After robbing Martinez, the assailants fled in the van. Martinez obtained the van's license plate number and used his cell phone to contact the police. The van was stopped by police and the minor and Eddie S. were among its occupants. The van was the one stolen from the Sanchezes on December 13, during the home invasion robbery.

At the police station, Officer Anthony Perry advised the minor of his *Miranda*³ rights. The minor said he had rented the van at 8:00 p.m. that day for \$100 from a Mexican male and a female, whose names he did not know. He and his cousin, Eddie S., drove to south Stockton where they picked up some friends and drove around before they were stopped. The minor denied having been in a wreck that night, and claimed not to know how the van sustained damage to its rear bumper.

Officer Chris Villanueva received a message from probation officer Kobiyashi that the minor wanted to tell the police the truth about what had happened. On January 10, 2003, Villanueva met with the minor at the Juvenile Justice Center, advised the minor of his *Miranda* rights and the minor indicated he wished to speak with Villanueva.⁴ The minor denied being involved in the Sanchez home invasion robbery, claiming he was asleep at home when those robberies occurred. As to the robbery of Martinez, the minor admitted he lied when he said he had rented the van from a Mexican. Instead, he now claimed to have rented the van from Anthony M. on the day of the robbery for \$25 and returned it to Anthony at 9:30 p.m. that evening. The minor met up with Anthony at 11:00 p.m. and, for \$15, he re-rented the van. The

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

⁴ The record is unclear as to precisely when Officer Villanueva interviewed the minor. Villanueva initially testified that the interview with the minor occurred on January 10, 2003; however, he later testified twice that the interview took place on January 2, 2003. Since the parties refer only to the January 10 date, we shall accept that date for purposes of this appeal.

minor then picked up some friends, including Marcus S., and they drove around. Marcus wanted to drive the van and the minor let him. While Marcus was driving the van, he suddenly pulled in front of the pizza delivery vehicle and stopped, causing the delivery vehicle to rear-end them. Marcus got out of the van and, at gunpoint, robbed the pizza man. Marcus got back in and they drove off. The minor, who had not known of Marcus's intent to commit a robbery, confronted him about the robbery and the two had to be kept from fighting.

The minor testified at trial and denied taking part in the home invasion robbery at the Sanchez residence. Similar to what he had told Officer Villanueva, the minor claimed he was asleep at home at the time of the robbery. The minor's father, who had convictions for welfare fraud and counts of perjury, and the minor's cousin corroborated the minor's testimony.

With regard to the robbery of Martinez, the minor testified essentially in conformity with what he had told Officer Villanueva. However, the minor denied telling Officer Villanueva that Marcus had a gun; instead the minor claimed he did not know that Marcus had robbed Martinez until they drove off and Marcus told him as much.

DISCUSSION

I

The minor contends his counsel was ineffective for failing to object to the admission of his statements to Officer Villanueva because they were obtained in violation of his Sixth Amendment right to counsel. We reject the claim.

"To prevail on a claim of ineffective assistance of counsel, defendant must establish his attorney's representation fell below professional standards of reasonableness and must affirmatively establish prejudice. [Citations.]" (*People v. Hinds* (2003) 108 Cal.App.4th 897, 900.) However, "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." (*In re Fields* (1990) 51 Cal.3d 1063, 1079.) In this context, "prejudice" means that it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings. (*People v. Lewis* (1990) 50 Cal.3d 262, 288.)

Here, the minor cannot establish prejudice. Even if the minor's counsel had obtained suppression of the statements the minor made to Officer Villanueva, the minor testified to essentially the same facts. Thus, the court would have heard the same evidence in any event. Of course, it might be argued that had counsel obtained suppression of the statements to Villanueva the minor might not have testified at all. In such a case, the only evidence before the trier of fact regarding the minor's innocent obtaining of the van was his statement to Officer Perry that he had rented the van from a Mexican male and a female, whose names he did not know. Since this latter version was even more absurd than his claim of having rented the

van from Anthony M., the result would have been no different had the statements to Villanueva been suppressed. Hence, the minor cannot establish prejudice from his counsel's omission.

No ineffective assistance of counsel is shown.

II

Defendant contends the evidence is insufficient to sustain the home invasion robberies. We disagree.

"When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence--i.e., evidence that is credible and of solid value--from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt." (*People v. Green* (1980) 27 Cal.3d 1, 55; *In re Frederick G.* (1979) 96 Cal.App.3d 353, 362-365.)

The minor argues that the identification of him by the Sanchezes is not evidence that is reasonable, credible and of solid value because of inconsistencies in their physical descriptions of the intruders, their lack of opportunity to observe the intruders, and the length of time between the robbery and the identifications. We are not persuaded.

The minor and his light-skinned companion, tentatively identified as Eddie S., were in the Sanchezes's home in daylight hours and were there long enough to move the Sanchezes to various rooms and question them about their money and jewelry, clearly sufficient time for identification. While the minor was wearing a hood, it was open enough so that each of the Sanchezes

could see his face. And the minor's companion's bandana covered only from his nose on down, leaving most of his face in clear view.

The descriptions of the minor by the Sanchezes ranged from his being a little over 5 feet 5 inches to 5 feet 10 inches tall, and his weight up to 180 pounds. The police report listed him as 5 feet 9 inches tall and 140 pounds, and the probation officer's report has him at 5 feet 10 inches and 155 pounds. Given the common difficulty in accurately describing people's height and weight, we do not find these discrepancies significant.

The minor makes much ado over the inconsistency of Gloria's describing the light-skinned person as "white," whereas Benjamin referred to both intruders as "black." However, a fair reading of the transcript shows that Gloria believed the "white" person was an African-American of light complexion.

Consequently, we conclude the challenged testimony was reasonable, credible, and of solid value.

The minor also faults the court for finding it of "great significance" that Gloria "picked out photographs of two boys who just happened to be found in possession of her stolen car." The court's deficiency in making such a finding, according to the minor, lies in the fact that Gloria "did not just pick the two boys who were found in the van . . . [s]he picked three of the nine photos, one of which was not found in the van." This is a mischaracterization of the record. Gloria made clear that the person shown in photo No. 5 (Eddie S.) looked more like the

light-skinned intruder than did the person depicted in photo No. 1.

In sum, not only is the evidence substantial in supporting the home invasion robbery convictions, it borders on being overwhelming.

DISPOSITION

The judgment (order committing the minor to California Youth Authority) is affirmed.

_____, SIMS, J.

We concur:

_____, SCOTLAND, P.J.

_____, RAYE, J.